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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,722	09/28/2000	Donald L. Wilson	12548US02	2793

7590 10/08/2003

McAndrews Held & Malloy Ltd
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EXAMINER

GRIER, LAURA A

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 10/08/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/676,722

Applicant(s)

WILSON ET AL.

Examiner

Laura A Grier

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-14 is/are allowed.
- 6) ☒ Claim(s) 1,3-7,15,16 and 18-23 is/are rejected.
- 7) ☒ Claim(s) 2 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: *See Continuation Sheet*.

Continuation of Attachment(s) 6). Other: copies of drawing from prior art.

Art Unit: 2644

DETAILED ACTION

1. The indicated allowability of claims 15, and 18-23 is withdrawn in view of the newly discovered reference(s) to Taenzer et al., U. S. Patent No. 60009183. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claim 22** is rejected under 35 U.S.C. 102(e) as being anticipated by Taenzer et al., U. S. Patent No. 6009183.

Regarding **claim 22**, Taenzer et al. (herein, Taenzer) discloses a sound delivery tube system. Taenzer's disclosure comprises a sound delivery system body (12), which reads on a housing; a microphone (26), which reads on a receiver; a sound delivery tube (14) with an eartip, wherein, the eartip may be comprised of various resilient materials, thus inherently discloses a foam eartip portion (16), which reads on the flexible eartip and a rigid tube nipple, and a flexible channel, and inherently discloses a

Art Unit: 2644

flexible channel as evident by the fact of a sound transmission tube, therein (figures 1 and 2, col. 2, lines 51-61, col. 3, lines 1-22, and col. 4, lines 20-42).

Regarding **claim 23**, Taenzer discloses everything claimed as applied above (see claim 22). Taenzer further discloses the transmission tube (flexible channel) with a first end and second end (col. 3, lines 13-15).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1, 3-7, 15-16, 18-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Taenzer.

Regarding **claim 1**, Taenzer discloses a sound delivery tube system. Taenzer's disclosure comprises a sound delivery system body (12), which reads on a housing; a microphone (26), which reads on a receiver; a sound delivery tube (14) with an eartip, (16), which reads on the flexible eartip and a rigid tube nipple, and a flexible channel, and inherently discloses a flexible channel as evident by the fact of a sound transmission tube, therein (figures 1 and 2, col. 2, lines 51-61, col. 3, lines 1-22, and col. 4, lines 20-42). In figures 1 and 2, Taenzer the sound delivery body (housing) discloses the housing and tube for an obtuse angle, and thus hangs vertical to the ear of the user (see the attached drawings).

Regarding **claim 3 and 7**, Taenzer discloses everything claimed as applied above (see claim 3). Taenzer further discloses the transmission tube (flexible channel) with a first end and second end (col. 3, lines 13-15).

Regarding **claim 4**, Taenzer discloses everything claimed as applied above (see claim 1). The eartip may be comprised of various resilient materials, thus inherently discloses a foam eartip portion.

Regarding **claim 5**, Taenzer discloses everything claimed as applied above (see claim 4). Figure 2 disclose the tube nipple couple to the eartip.

Regarding **claim 6**, Taenzer discloses everything claimed as applied above (see claim 1). However, Taenzer fails to specifically disclose an acoustic damper located in the tube nipple. The use of an acoustic damper was well known in the art. Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention by providing an acoustic damper in the tube of the earphone device for the purpose of shaping the sound of the signal being received.

Regarding **claim 15**, Taenzer discloses a sound delivery tube system. Taenzer's disclosure comprises a sound delivery system body (12), which reads on a housing; a microphone (26), which reads on a receiver; a sound delivery tube (14) with an eartip (16), which reads on the flexible eartip and a rigid tube nipple, and a flexible channel, and inherently discloses a flexible channel as evident by the fact of a sound transmission tube, therein (figures 1 and 2, col. 2, lines 51-61, col. 3, lines 1-22, and col. 4, lines 20-42). However, Taenzer fails to specifically disclose an acoustic damper

Art Unit: 2644

located in the tube nipple. The use of an acoustic damper was well known in the art. Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention by providing an acoustic damper in the tube of the earphone device for the purpose of shaping the sound of the signal being received.

Regarding **claim 16**, Taenzer discloses everything claimed as applied above (see claim 15). In figures 1 and 2, Taenzer the sound delivery body (housing) discloses the housing and tube for an obtuse angle, and thus hangs vertical to the ear of the user (see the attached drawings)

Regarding **claim 18**, Taenzer discloses everything claimed as applied above (see claim 15). The eartip may be comprised of various resilient materials, thus inherently discloses a foam eartip portion. Figure 2 discloses the tube nipple coupled to the eartip.

Regarding **claims 19-21**, Taenzer discloses everything claimed as applied above (see claim 15). Taenzer further discloses the transmission tube (flexible channel) with a first end and second end (col. 3, lines 13-15).

6. **Claims 1 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiess, application no. 648172.

Regarding **claim 1**, Schiess discloses a hearing aid to be worn inside the ear. Schiess' disclosure comprises a housing (10); a microphone found associated with the microphone opening (20), which reads on a receiver, an eartip comprised of optoplastic,

Art Unit: 2644

and a rigid tube nipple composed of a hose (30) providing a sound conduit (flexible channel), wherein is inherent the tube begins inside of the housing and extend outside (see figures 1 and 2) and as well Schiess provides an obtuse angle between the housing and the axis of the tube (please see the attached drawings). However, Schiess fails to specifically disclose the eartip as being flexible. The use of a flexible eartip was well known. Thus, it would be obvious to one of the ordinary skill in the art to modify the eartip of Schiess by providing a flexible eartip, such as foam for the purpose of providing comfort to the user ears.

Regarding **claim 22**, Schiess discloses a hearing aid to be worn inside the ear. Schiess' disclosure comprises a housing (10); a microphone found associated with the microphone opening (20), which reads on a receiver, an eartip comprised of optoplastic, and a rigid tube nipple composed of a hose (30) providing a sound conduit (flexible channel), wherein is inherent the tube begins inside of the housing and extend outside (see figures 1 and 2). However, Schiess fails to specifically disclose the eartip as being flexible. The use of a flexible eartip was well known. Thus, it would be obvious to one of the ordinary skill in the art to modify the eartip of Schiess by providing a flexible eartip, such as foam for the purpose of providing comfort to the user ears.

Allowable Subject Matter

7. **Claims 8-14** are allowed.

8. **Claims 2 and 17** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

The applicant provided remarks in respect the amended changes of the claims and the drawing of figure 1b to overcome the lack of antecedent basis of the objected to claims. The changes are acceptable, however, after further search, a new reference of prior art has been set forth in the Office Action above. The new reference discloses the claimed invention in respect to the housing, receiver, eartip and tube.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Application/Control Number: 09/676,722
Art Unit: 2644

Page 8

Washington, D.C. 20231

Or faxed to:

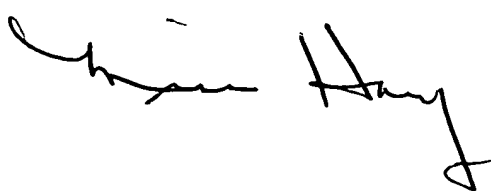
(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

LAG

October 6, 2003


MINSUN OH HARVEY
PRIMARY EXAMINER

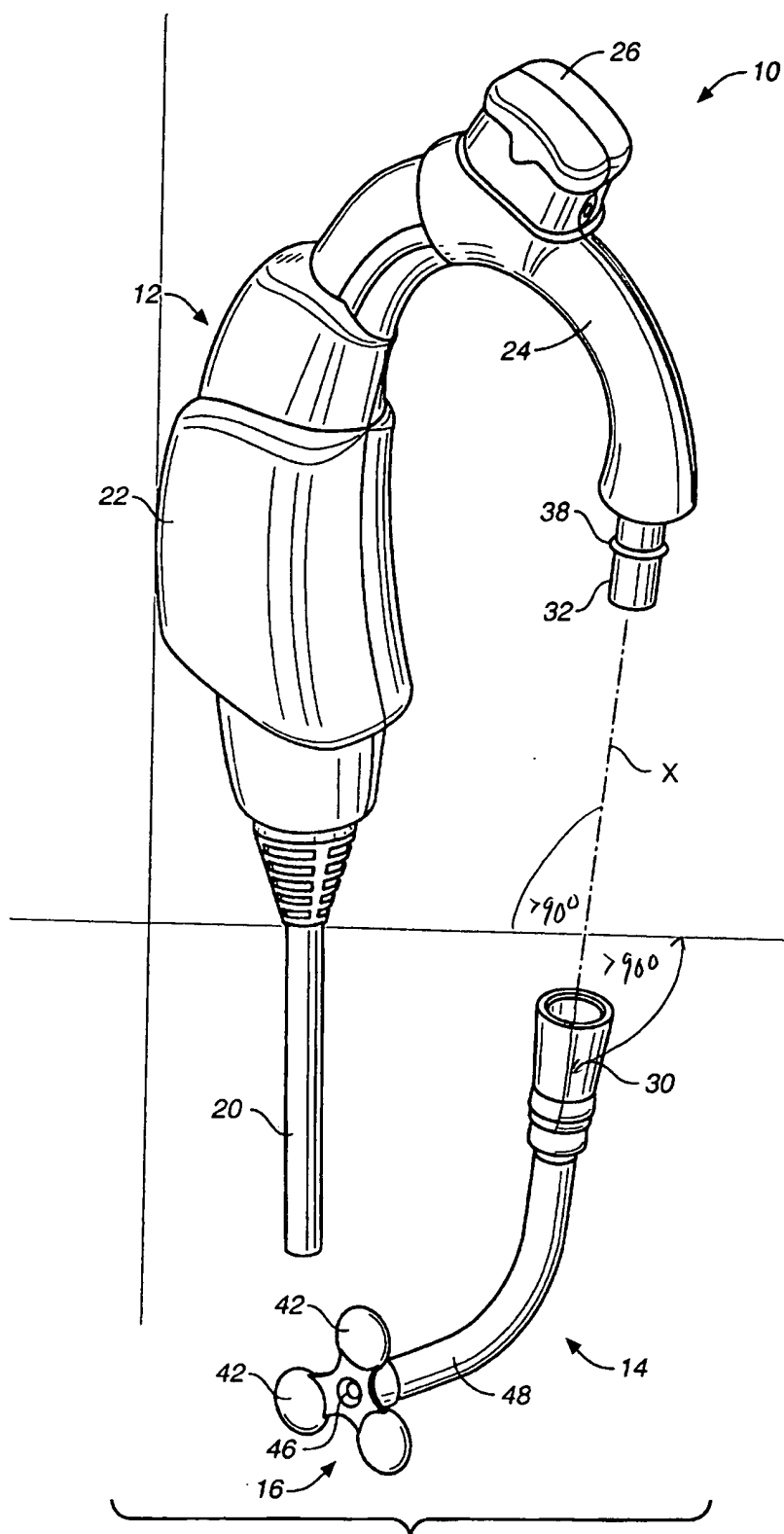


FIG. 1

